

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

Grace Galloway, Andy Lesko, and Brenda  
Shoss, individually and on behalf of all others  
similarly situated,

Plaintiffs,

v.

VALVE CORPORATION, a Washington  
corporation,

Defendant.

No. 2:16-cv-01941-JLR

**VALVE CORPORATION'S REPLY  
IN SUPPORT OF MOTION TO  
DISMISS PLAINTIFFS' FIRST  
AMENDED COMPLAINT**

**NOTE ON MOTION CALENDAR:  
October 23, 2020**

1 Plaintiffs' Opposition is long on hyperbole and sweeping policy arguments, but short on  
 2 support in the law or the record. The remaining Plaintiffs are parents whose children used  
 3 Valve's Steam platform, played its video game CS:GO, and allegedly gambled away virtual  
 4 items called skins they acquired through CS:GO or on Steam. It is undisputed the parents did  
 5 none of that—they are not Valve customers, do not have Steam accounts or play CS:GO, and do  
 6 not claim to ever have used or gambled any skins. The minors' claims are no longer at issue.  
 7 They were resolved against Plaintiffs through full arbitration hearings on the merits, at the  
 8 conclusion of which both arbitrators held that Valve did not act improperly toward the minors or  
 9 facilitate their gambling. The parent Plaintiffs' remaining claims are simply to recover the  
 10 money they gave their children, which the minors used to acquire skins. But if Valve did not act  
 11 improperly toward the minors or facilitate their gambling—findings that are binding on  
 12 Plaintiffs—the parents have no claims to recover from Valve the money that their children spent.

13 The parents' narrow remaining claims are barred by the preclusive effect of the  
 14 arbitrators' decisions and, independently, fail on their merits. These fatal flaws cannot be fixed  
 15 by re-pleading. All remaining claims should be dismissed with prejudice.

16 **A. The Arbitrators' Findings That Valve Did Not Act Illegally or Wrongfully**  
 17 **Towards the Minors Are the Law of the Case.**

18 Plaintiffs try to play both sides of the field by arguing the arbitrators' findings *are not*  
 19 law of the case as to Plaintiffs' remaining claims, while at the same time arguing they *are* law of  
 20 the case as to issues Plaintiffs incorrectly claim the arbitrators decided against Valve (the  
 21 arbitrators did not). (*E.g.*, Dkt. #63 at 3, 8–11.) Plaintiffs cannot have it both ways.

22 Plaintiffs claim they are not bound by the arbitrators' findings because their claims  
 23 require a “different legal and factual analysis” than those asserted by the minors. (*Id.* at 3.) In  
 24 fact, Plaintiffs' claims rest on the same facts the parties litigated and the arbitrators ruled on in  
 25 two separate arbitration proceedings on the minors' claims. Two arbitrators concluded after full  
 26 hearings that (1) Valve was not responsible for the minors' gambling on third-party websites or

1 their related losses, and (2) Valve did not act wrongfully or illegally toward the minors. (Dkt.  
 2 #35-1 at 4–5; Dkt. #35-2 at 3–4.) Plaintiffs’ claims are all based on allegedly suffering financial  
 3 loss when their children gambled away money Plaintiffs gave them. (E.g., Dkt. #63 at 10  
 4 (“Plaintiffs’ allegations only go towards *their* money that their children spent gambling ....”);  
 5 Dkt. #58 (“Am. Compl.”), Parties ¶¶ 27–29.) Plaintiffs’ claims require a finding that Valve  
 6 facilitated the minors’ gambling or acted wrongfully toward the minors. Each claim, in effect,  
 7 seeks to recover the minors’ gambling losses. The arbitrators already held Valve was not  
 8 responsible for those losses—there is no injury that has not been addressed.

9 Plaintiffs contend the arbitrators found that skins gambling was illegal and that Valve  
 10 acted wrongfully towards the minors. (Dkt. #63 at 3, 11.) Plaintiffs are wrong. Neither  
 11 arbitrator found that third-party skins gambling was illegal. To the contrary, both arbitrators  
 12 concluded that Plaintiffs failed to prove any wrongful or illegal acts attributable to Valve  
 13 occurred. (Dkt. #35-1 at 4–5; Dkt. #35-2 at 3–4.) In the Shoss/E.B. arbitration, Arbitrator  
 14 Laffey found that “E.B. has not carried his burden of proof to establish that Valve is responsible  
 15 for his gambling losses” and presented no evidence “that his gambling was the result of some  
 16 unfair or deceptive act or practice by Valve.” (Dkt. #35-1 at 4.) Arbitrator Schiff similarly  
 17 found in the Galloway/J.P. arbitration that there was “no proven connection” between Valve and  
 18 the third-party gambling websites, Valve did not violate public policy, and Plaintiff Galloway  
 19 and her son J.P. “did not prove their case.” (Dkt. #35-2 at 3.)

20 Plaintiffs misconstrue Valve’s argument regarding the Ninth Circuit’s decision. (Dkt.  
 21 #63 at 9.) The Ninth Circuit’s decision that the parents were not required to arbitrate their  
 22 individual claims does not undo the preclusive effect on the parents of the judgment confirming  
 23 the arbitrators’ findings on the *minors’ claims*. The arbitrators found that Valve did not facilitate  
 24 the minors’ gambling or otherwise act wrongfully toward the minors. Plaintiffs are barred from  
 25 relitigating claims based on the same issues. For example, the parents cannot establish their  
 26 claim under RCW 9.46.200 because to do so would require a finding that Valve was responsible

1 for the minors' gambling, contrary to the existing judgment confirming the arbitrators' awards.

2 **B. Washington Law Gives the Arbitrators' Findings Preclusive Effect.**

3 Plaintiffs argue that claim and issue preclusion do not apply because the arbitrations are  
4 not "prior proceedings." (Dkt. #63 at 3, 12.) If the arbitrations and this suit are viewed as two  
5 parts of the same proceeding, the arbitrators' awards are the law of the case and bar Plaintiffs'  
6 claims, as discussed above. If viewed as separate proceedings, *res judicata* (claim preclusion)  
7 and collateral estoppel (issue preclusion) bar them just the same.

8 Plaintiffs rely on two cases to support their argument that claim and issue preclusion are  
9 inapplicable: *Roberson v. Perez*, 156 Wash. 2d 33, 123 P.3d 844 (2005), and *Cook v. Brateng*,  
10 180 Wash. App. 368, 321 P.3d 1255 (2014). Neither case helps them. *Roberson* involved only  
11 the law of the case; the court cited *res judicata* requirements in a footnote contrasting "other  
12 closely related doctrines" with which law of the case is "often confused." 156 Wash. 2d at 41 &  
13 n.7. *Cook* turned on both *res judicata* and law of the case. The court did not apply *res judicata*  
14 because the first appellate opinion was in the same case, not a prior proceeding. It did not apply  
15 law of the case because the first opinion did not resolve the question at issue in the second  
16 opinion. 180 Wash. App. at 373–75. Here, if the arbitrations and this suit are viewed as separate  
17 proceedings, the arbitration awards constitute "a final determination on the merits sufficient to be  
18 given preclusive effect under Washington law." *MedChoice Risk Retention Grp. Inc. v. Katz*,  
19 No. C17-387-TSZ, 2017 WL 3970867, at \*9 (W.D. Wash. Sept. 8, 2017).

20 Plaintiffs' remaining arguments fail. First, Plaintiffs argue the arbitrations did not  
21 involve identical issues, but that is inconsistent with the undisputed record. As discussed above,  
22 Plaintiffs' remaining claims hinge on the allegation that Valve is responsible for the minors'  
23 third-party gambling, which was already litigated and decided.

24 Second, Plaintiffs claim that privity does not exist between them and the minors.  
25 Plaintiffs, however, are not merely parents of children who arbitrated their claims. Plaintiffs  
26 actively participated in the arbitrations, asserted claims on behalf of their children, and were

1 represented by the same legal counsel. Plaintiffs also seek to obtain the same relief that the  
 2 minors sought—and failed—to obtain in the arbitrations. Privity exists. *See Harley H. Hoppe &*  
 3 *Assocs., Inc. v. King County*, 162 Wash. App. 40, 51–52, 255 P.3d 819 (2011) (holding that  
 4 privity existed for issue preclusion because of father-daughter relationship and both “were  
 5 represented by the same legal counsel and relied on the same legal briefing and arguments”).

6 **C. Plaintiff Lesko Is Barred From Challenging the Arbitrators’ Findings.**

7 Judge Coughenour ordered Plaintiff Lesko and his minor child to arbitrate their claims.  
 8 They participated in the original consolidated arbitration, then chose not to re-file their  
 9 arbitration demand individually. Plaintiffs now argue Mr. Lesko is not bound by the arbitrators’  
 10 findings because neither he nor his minor child completed the arbitration process. (Dkt. #63 at  
 11 14.) Plaintiffs ignore that Plaintiff Lesko previously alleged he was similarly situated to  
 12 Plaintiffs Galloway and Shoss and alleged the same harm and wrongdoing by Valve. (Dkt. #1-3  
 13 (“Compl.”) ¶¶ 13–15, 107–09.) Plaintiff Lesko is not free to disregard Judge Coughenour’s  
 14 order compelling arbitration, wait to see the outcome of the other arbitrations, and then litigate  
 15 his individual claims in court without consequence. This procedural maneuvering is improper.

16 **D. Plaintiffs’ RCW 9.46.200 Claim (Count 2) Fails as a Matter of Law.**

17 *1. RCW 9.46.200 Applies Only to Authorized Gambling, but Plaintiffs’*  
 18 *Claims Are Based on Valve’s Alleged Participation in Illegal Gambling.*

19 RCW 9.46.200 creates a statutory cause of action against certain persons “controlling the  
 20 operation of any gambling activity *authorized* by this chapter.” Plaintiffs do not claim Valve  
 21 controlled an *authorized* gambling activity, but rather that Valve engaged in *illegal* gambling.  
 22 Illegal gambling is addressed by RCW 4.24.070, which creates a private right of action to  
 23 recover losses from “any illegal gambling games.” Plaintiffs originally sued Valve under both  
 24 statutes. (Compl. ¶¶ 132–49.) Plaintiffs dropped their RCW 4.24.070 (illegal gambling) claim  
 25 from the Amended Complaint, but are now trying to backdoor an illegal gambling claim through  
 26 a statute that creates a cause of action for “authorized” gambling only.

1 Plaintiffs acknowledge these two statutes must be harmonized. (Dkt. #63 at 21.) Instead  
 2 of giving effect to each statute, Plaintiffs blur them together. First, Plaintiffs argue that RCW  
 3 9.46.200 (authorized gambling) must be construed to create a cause of action for unauthorized  
 4 gambling to avoid an “absurd result” of “subjecting licensed gambling activities to greater  
 5 liability than illegal gambling activities.” (Dkt. #63 at 22.) There is no absurdity. Any  
 6 substantive difference between the remedies in the two statutes is minor, and it is reasonable for  
 7 the Legislature to provide a lesser remedy to a person engaged in illegal gambling (RCW  
 8 4.24.070) than to one playing an authorized gambling game (RCW 9.46.200). The differences in  
 9 statutory language—“authorized” in RCW 9.46.200 and “illegal gambling” in RCW 4.24.070—  
 10 show a legislative intent to provide different causes of action. *In re Forfeiture of One 1970*  
 11 *Chevrolet Chevelle*, 166 Wash. 2d 834, 842, 215 P.3d 166 (2009) (“Where the legislature uses  
 12 certain statutory language in one statute and different language in another, a difference in  
 13 legislative intent is evidenced.”).

14 Second, Plaintiffs argue that RCW 9.46.010 requires a liberal construction of  
 15 RCW 9.46.200 (authorized gambling) to include illegal gambling claims. But RCW 9.46.010  
 16 provides that liberal construction should be applied to achieve the end of closely controlling  
 17 “[a]ll factors incident to the activities **authorized** in this chapter.” RCW 9.46.010 (emphasis  
 18 added). It does not state (or even suggest) RCW 9.46.200 should be stretched to reach  
 19 **unauthorized** activities, which RCW 4.24.070 covers. Plaintiffs cannot overcome the statute’s  
 20 plain language or avoid the rules of statutory construction by invoking policy arguments about  
 21 the need for a remedy when the Legislature provided one under RCW 4.24.070.

22 Separately, Valve’s Motion established that granting the parents a cause of action under  
 23 RCW 9.46.200 (authorized gambling) would undermine the Legislature’s intent to deter  
 24 underage gambling by circumventing RCW 9.46.228(5), which bars any recovery by a minor  
 25 who gambles. (Dkt. #59 at 20.) Instead of refuting this argument, Plaintiffs ignore it. RCW  
 26 9.46.200 and RCW 9.46.228(5) are not harmonized by barring minors from recovering their

1 gambling losses but allowing their parents to recover those same losses—an absurd result.

2 Finally, Arbitrator Laffey held that claims under RCW 9.46.200 are limited to  
3 “authorized” gambling activities. (Dkt. #35-1 at 4.) Arbitrator Laffey’s award was confirmed  
4 into a judgment that was affirmed on appeal with respect to the minors and now has preclusive  
5 effect. Its conclusion holds whether the minors or their parents bring the claims.

6 2. *Plaintiffs Cannot Establish That Valve Engaged in “Gambling” as*  
7 *Washington Law Defines It.*

8 Plaintiffs’ claims all relate to cosmetic virtual items in video games (skins) that cannot be  
9 bought or sold in the real world or “cashed in” through Valve. These items provide no advantage  
10 in the game and are not required to play the games or extend gameplay. Plaintiffs claim these  
11 virtual items are “things of value” under RCW 9.46.0285, and allege that Valve is engaged in  
12 “gambling” because the skins can be wagered on third-party websites or obtained through a  
13 random distribution in a “loot box.” Neither of these activities meets the statutory definition of  
14 “gambling” under RCW 9.46.0237, which requires “staking or risking something of value upon  
15 the outcome of a contest of chance or a future contingent event not under the person’s control or  
16 influence, upon an agreement or understanding that the person or someone else will receive  
17 something of value in the event of a certain outcome.” Because Valve is not engaged in  
18 “gambling,” Plaintiffs cannot state a claim under RCW 9.46.200 (authorized gambling),  
19 RCW 4.24.070 (illegal gambling), or any other gambling statute.

20 First, Plaintiffs broadly assert that “both arbitrators ruled that Skins gambling is illegal  
21 online gambling” without citing language in the awards to back up that claim. (Dkt. #63 at 20.)  
22 There is no such language. While both arbitrators called the minors’ actions on third-party  
23 websites “gambling,” neither arbitrator (a) discussed or held that skins were “things of value”  
24 under Washington’s gambling laws, or (b) held that Valve was engaged in “gambling” under  
25 Washington law. (Dkts. #35-1, 35-2.) To the contrary, both arbitrators held that Valve was *not*  
26 engaged in illegal gambling in violation of Washington law—a conclusion they could not have

1 reached if they found that Valve was engaged in “gambling” with “things of value.”

2 Second, Plaintiffs argue that virtual keys Steam users can purchase from Valve are  
 3 “things of value” because they are used to open virtual “loot boxes” containing skins, which  
 4 Plaintiffs allege is akin to spinning a slot machine. (Dkt. #63 at 20–21). Plaintiffs do not claim  
 5 that loot boxes give users another key to open another loot box, as would a casino token won  
 6 from a slot machine. *See Kater v. Churchill Downs, Inc.*, 886 F.3d 784, 787 (9th Cir. 2018)  
 7 (concluding virtual chips won in social casino game were a “thing of value” under Washington  
 8 law because they were necessary to play the game and allowed a user “to place another wager or  
 9 re-spin a slot machine”). Instead, Plaintiffs plead that cosmetic skins are received from a loot  
 10 box. (Am. Compl., Parties ¶¶ 27–29.) That distinction is fatal because the definition of  
 11 “gambling” in RCW 9.46.0237 requires *both* (a) “staking or risking something of value,” *and* (b)  
 12 that the person “receive something of value in the event of a certain outcome.” Even if virtual  
 13 keys were considered a “thing of value” under Washington law—which they are not—Plaintiffs  
 14 must still establish that the skins received from loot boxes are “things of value,” which Plaintiffs  
 15 cannot do for the reasons discussed above and in Valve’s Motion.

16 Finally, Plaintiffs do not address Valve’s showing that skins are not “money” or a “token,  
 17 object or article exchangeable for money or property” or a “credit or promise ... contemplating  
 18 transfer of money or property ... or involving extension of ... a privilege of playing at a game”  
 19 because they are digital decorations that do not affect or extend gameplay. (Dkt. #59 at 21–22.)  
 20 Accordingly, only two narrow legal issues remain to be resolved: (i) whether the arbitrators held  
 21 that skins are “things of value” or that Valve is engaged in “gambling”; and (ii) whether  
 22 Plaintiffs receive a “thing of value” when “loot boxes” are opened. Both issues are readily  
 23 resolved against Plaintiffs, and neither deficiency can be remedied by leave to re-plead.

24 **E. Plaintiffs Cannot State a Claim for a CPA Violation (Count 1).**

25 *1. Plaintiffs Do Not Allege a Per Se CPA Violation.*

26 Plaintiffs argue they can establish a *per se* unfair trade practice because they claim Valve

1 violated Washington gambling laws, despite the fact that the gambling statute Plaintiffs rely  
 2 on—RCW 9.46.010—does not contain “a specific legislative declaration of ‘public interest’.”  
 3 *Brummett v. Washington’s Lottery*, 171 Wash. App. 664, 677–78, 288 P.3d 48 (2012) (holding a  
 4 *per se* CPA claim could not be based on Washington’s lottery statutes because they do not  
 5 “contain a specific legislative declaration of ‘public interest’”).

6 Plaintiffs wrongly claim that general references to the “public” and “public policy” in  
 7 RCW 9.46.010 render the violation of any statute in RCW ch. 9.46 a *per se* unfair trade practice.  
 8 Washington law requires greater specificity. “A *per se* unfair trade practice exists when a statute  
 9 which has been declared by the Legislature to constitute an unfair or deceptive act in trade or  
 10 commerce has been violated.” *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*,  
 11 105 Wash. 2d 778, 786, 719 P.2d 531 (1986). In *Hangman Ridge*, the Supreme Court rejected  
 12 the argument Plaintiffs make here, that a *per se* violation exists whenever there is “conduct  
 13 which is ‘illegal’ and ‘against public policy’.” *Id.* Instead, the dispositive issue is whether the  
 14 Legislature specifically stated that the violation of a statute constitutes “an unfair or deceptive act  
 15 in trade or commerce” or an “unfair trade practice.” *Id.* (listing examples of such statutes). The  
 16 court explained that “the Legislature, not this court, is the appropriate body to establish that  
 17 interaction by declaring a statutory violation to be a *per se* unfair trade practice. Where the  
 18 Legislature ***specifically defines the exact relationship*** between a statute and the CPA, this court  
 19 will acknowledge that relationship.” *Id.* at 787 (emphasis added).

20 RCW 9.46.010 does not meet the *Hangman Ridge* requirements because it does not refer  
 21 to the CPA, identify a violation of RCW ch. 9.46 as an “unfair trade practice,” or even refer to  
 22 the “public interest.” The Washington Attorney General implicitly recognized RCW ch. 9.46  
 23 lacks the language required to establish a *per se* unfair trade practice by omitting statutes from  
 24 that chapter from its index of statutes that can be the basis for a *per se* CPA claim. *See* Wash.  
 25 Office of the Attorney General, *Statutes*, <https://www.atg.wa.gov/statutes> (last visited Oct. 22,  
 26 2020). Mere violation of Washington’s gambling laws does not establish a *per se* CPA claim,

1 regardless of the general references to the public in RCW 9.46.010. *See, e.g., Haner v. Quincy*  
 2 *Farm Chems., Inc.*, 97 Wash. 2d 753, 762–63, 649 P.2d 828 (1982) (holding that violation of  
 3 Washington’s UCC did not establish a *per se* CPA violation even though the UCC statutes “may  
 4 well involve public policy”). Taking Plaintiffs’ argument to its logical conclusion leads to the  
 5 illogical result that *any* violation of law would be a *per se* CPA violation

6           2.       *Plaintiffs Do Not Allege an “Unfair or Deceptive Act or Practice.”*

7           Plaintiffs try to save their CPA claim by arguing Valve engaged in unfair or deceptive  
 8 conduct by “entic[ing] unsuspecting users including minors” into gambling. (Dkt. #63 at 19.)  
 9 This argument illustrates perfectly how Plaintiffs are attempting to relitigate issues that were  
 10 already tried to, and decided by, the arbitrators. Plaintiffs acknowledge “the arbitrators found  
 11 against Plaintiffs’ children based on the children’s intentional and knowing gambling online.”  
 12 (*Id.* at 11 (emphasis omitted); *see also* Dkt. #35-1 at 2 (“E.B. was introduced to gambling by  
 13 friends and voluntarily engaged in gambling with skins on third party websites without any  
 14 inducement to do so by Valve.”); Dkt. #35-2 at 3 (“JP misrepresented his age and then willfully  
 15 engaged in gambling through third party websites.”).) Additionally, in the Galloway/J.P.  
 16 arbitration, Arbitrator Schiff found that Plaintiff Galloway’s minor child—not Valve—was the  
 17 one who misled Plaintiff Galloway about the minor’s gambling activities. (Dkt. #35-2 at 3.)  
 18 Plaintiffs are bound by the arbitrators’ findings.

19           Plaintiffs also concede in their Amended Complaint that the minors knew they could lose  
 20 money while gambling skins on third-party websites. (Am. Compl., Parties ¶¶ 27–29, Factual  
 21 Background ¶¶ 72, 74.) Plaintiffs cannot now contradict their own allegations and the  
 22 arbitrators’ findings to attempt to save their CPA claim. *See Hakopian v. Mukasey*, 551 F.3d  
 23 843, 846 (9th Cir. 2008) (“Allegations in a complaint are considered judicial admissions.”). The  
 24 minors also could have refrained from gambling and avoided loss, but knowingly chose to  
 25 gamble anyway. Thus, there can be no “unfair or deceptive act or practice” under the CPA.  
 26 *Esch v. Legacy Salmon Creek Hosp.*, 738 F. App’x 430, 431 (9th Cir. 2018) (“An act or practice

1 is not unfair under Washington law if the consumer can avoid the injury.”) (citation omitted).

2 These fatal flaws in Plaintiffs’ CPA claim cannot be remedied by re-pleading.

3 **F. Plaintiffs’ Unjust Enrichment Claim Fails as a Matter of Law (Count 3).**

4 Plaintiffs do not dispute that their unjust enrichment claim rests on the same alleged  
5 conduct as their CPA, gambling, and negligence claims. Instead, Plaintiffs simply assert that  
6 their CPA, gambling, and negligence claims “should stand.” (Dkt. #63 at 23.) Those claims—  
7 and this one—fail, as discussed above and in Valve’s Motion. Moreover, the parents cannot  
8 establish the first element of their unjust enrichment claim—that there was a benefit conferred on  
9 one party (Valve) by another (the parents)—because the parents are not Steam users or Valve  
10 customers and did not buy skins, and therefore did not confer any benefit on Valve. At most, the  
11 minors conferred a benefit on Valve by using Steam or buying skins, but the arbitrators already  
12 decided the minors’ unjust enrichment claim against them. Plaintiffs also do not plead facts that  
13 could establish the second element—the party receiving the benefit (Valve) must have an  
14 appreciation or knowledge of it—or explain how Valve knew or could have known it was  
15 receiving a benefit from the parents, as the parents had no interactions with Valve. Nor can  
16 Plaintiffs establish it would be unjust for Valve to retain any benefits it received from engaging  
17 in a legal activity (offering skins).

18 **G. Plaintiffs’ Negligence Claim Fails With Their Gambling Claim (Count 4).**

19 The parents’ negligence claim turns on whether Valve owed them a duty to prevent their  
20 children from gambling their skins, which is a question of law. *Folsom v. Burger King*, 135  
21 Wash. 2d 658, 671, 958 P.2d 301 (1998). In compelling arbitration, Judge Coughenour noted the  
22 parents did not plead enough facts in their original Complaint to establish personal claims. (Dkt.  
23 #30 at 7.) The Amended Complaint does not plead additional facts to fix that fatal flaw.

24 The parents are not Valve customers or Steam users and do not claim ever to have opened  
25 a “loot box” or owned a “skin,” much less to have gambled one. It is undisputed that Valve  
26 owes no duty to third parties like the parents under such circumstances. *Folsom*, 135 Wash. 2d

1 at 674 (“Under traditional tort law, absent affirmative conduct or a special relationship, no legal  
 2 duty to come to the aid of a stranger exists. Further, a private person does not have the duty to  
 3 protect others from criminal acts of third parties.”) (internal citation omitted).

4 The parents do not claim they have a special relationship with Valve that gave rise to a  
 5 duty of care. Indeed, the parents and Valve admittedly have no relationship at all. (*E.g.*, Am.  
 6 Compl. ¶ 58.) The special relationship exception does not apply.

7 The Amended Complaint alleges that Valve owed the parents a duty of care because it  
 8 undertook to stop the misuse of Steam by some third-party websites. (*Id.* ¶ 141.) Valve’s  
 9 Motion established that no such duty arose as a matter of law. (Dkt. #59 at 24.) Plaintiffs do not  
 10 address Valve’s arguments, but merely assert without citation that “Plaintiffs have sufficiently  
 11 alleged Valve owed and assumed duties” to take “reasonable action to prevent the harms suffered  
 12 by Plaintiffs.” (Dkt. #63 at 24). That is not a refutation. This exception is also inapplicable.

13 The Plaintiffs’ Opposition gives scant attention to their negligence claim, arguing only  
 14 that Valve owed them a duty of care because it allegedly “exposed Plaintiffs to high degree risk  
 15 of harm by creating a high probability their minor children would ... illegally gamble online and  
 16 lose Plaintiffs’ money,” and claiming losses to the parents were foreseeable “because Valve was  
 17 aware that many of the users gambling on its platform were under the age 21.” (*Id.*) More  
 18 simply, Plaintiffs’ argument is that Valve is responsible for gambling and knows many Steam  
 19 users are under 21, therefore it must owe the parents a duty of care.

20 Plaintiffs’ simplistic duty argument fails because the arbitrators held Valve did not owe  
 21 any duties to the minors, which is binding on Plaintiffs. (*E.g.*, Dkt. #35-1 at 4 (finding that the  
 22 “the evidence does not support the proposition that Valve had a duty to prevent E.B. from  
 23 gambling with skins ....”).) If Valve does not owe a duty to the minors to protect them against  
 24 gambling harms, it cannot have a duty to protect the parents (who are one step removed) from  
 25 those same harms. *See, e.g., Archbishop Coleman F. Carroll High Sch., Inc. v. Maynoldi*, 30 So.  
 26 3d 533, 544–45 (Fla. Dist. Ct. App. 2010) (parents bringing individual and representative claims

1 for injuries to deceased son were subject to same defenses son would be if he brought claims).

2 Plaintiffs rely on a single, inapplicable case, involving the theft of a Metro bus, *Parrilla*  
 3 *v. King County*, 138 Wash. App. 427, 157 P.3d 879 (2007). In *Parilla*, a bus driver parked and  
 4 left his bus with the engine running, leaving an obviously erratic passenger alone on board who  
 5 (unsurprisingly) took the bus for a joy ride, hitting the plaintiff's car. The Court of Appeals  
 6 acknowledged that "an actor ordinarily owes no duty to protect an injured party from harm  
 7 caused by the criminal acts of third parties." *Id.* at 436. But under the unique facts of that case,  
 8 King County owed the plaintiffs "a duty to guard against [the bus thief's] criminal conduct  
 9 because the driver's actions exposed the Parrillas to a recognizable high degree of risk of harm  
 10 through that misconduct, which a reasonable person would have taken into account." *Id.* at 433.

11 *Parrilla* does not save Plaintiffs' negligence claim. First, Plaintiffs' duty argument rests  
 12 only on assertions of counsel, not facts that could meet the narrow exception carved out in  
 13 *Parrilla*. Second, *Parrilla* addressed only whether King County had a duty to protect the  
 14 plaintiff against *criminal* conduct by third parties. *Id.* at 430. As discussed above, Plaintiffs  
 15 cannot establish that Valve engaged in illegal gambling. Nor does Valve have a duty to protect  
 16 against alleged injuries that occur on third-party websites Valve does not own, operate, or  
 17 control. *See Smith v. Stockdale*, 166 Wash. App. 557, 570, 271 P.3d 917 (2012); *Minahan v. W.*  
 18 *Wash. Fair Ass'n*, 117 Wash. App. 881, 892, 73 P.3d 1019 (2003).

19 **H. Plaintiffs' Claim for Injunctive Relief Is Not a Separate Cause of Action.**

20 Plaintiffs do not dispute that injunctive relief is merely a remedy and not a separate cause  
 21 of action. Plaintiffs' injunctive relief claim fails because their underlying claims fail. *Markoff v.*  
 22 *Puget Sound Energy, Inc.*, 9 Wash. App. 2d 833, 851, 447 P.3d 577 (2019).

23 **I. Conclusion.**

24 For the foregoing reasons, and those in Valve's Motion to Dismiss, Plaintiffs' remaining  
 25 claims should be dismissed with prejudice and without leave to re-plead.  
 26

1 DATED this 23rd day of October, 2020.

2 FOX ROTHSCHILD LLP

3  
4 By s/ Gavin W. Skok

5 Gavin W. Skok, WSBA #29766

6 Laura P. Hansen, WSBA #48669

7 *Attorneys for Defendant Valve Corporation*

**CERTIFICATE OF SERVICE**

I certify that I am a secretary at the law firm of Fox Rothschild LLP in Seattle, Washington. I am a U.S. citizen over the age of eighteen years and not a party to the within cause. On the date shown below, I caused to be served a true and correct copy of the foregoing on counsel of record for all other parties to this action as indicated below:

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EXECUTED this 23<sup>rd</sup> day of October, 2020, in Tacoma, Washington.

  
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